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For more information concerning the history of this Act, please see the [Table of Public Acts](#).

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CHAPTER T-7.1

TRUST AND FIDUCIARY COMPANIES ACT

- 1. In this Act** Definitions
- (a) “deposit” means a deposit of moneys from or on behalf of a person that a trust company, fiduciary company or any other person
(i) receives in the usual course of the deposit-taking business of that trust company, fiduciary company or other person, and
(ii) is obligated to repay on a fixed day, on demand or within a specified period of time following demand; deposit
- (b) “Director” means the Director of Corporations appointed pursuant to section 2 of the *Companies Act* R.S.P.E.I. 1988, Cap. C-14; Director
- (c) “fiduciary company” means a company listed in Schedule II; fiduciary company
- (d) “license” means, unless the context indicates otherwise, a license issued under subsection 6(3); license
- (e) “Minister” means the Attorney General; Minister
- (f) “provincial company” means a company or other body corporate incorporated or continued by or under a special or general Act of the Legislature before or after the commencement of this Act; provincial company
- (g) “security” means, in relation to a trust company, a share of any class of shares of the trust company or a debt obligation of the trust company and includes a warrant of the trust company, but does not include a deposit or any instrument evidencing a deposit in a trust company; security
- (h) “Superintendent” means the Superintendent appointed under section 13; Superintendent
- (i) “trust company” means a company listed in Schedule I and includes a fiduciary company deemed to be a trust company under subsection 25(3). 2004,c.50,s.1. trust company
- 2. This Act applies to every provincial company. 2004,c.50,s.2.** Application
- 3. Where there is a conflict or inconsistency between a provision of this Act or of the regulations made under this Act and a provision of** Conflict
- (a) the instrument of incorporation or incorporating legislation of a provincial company or any amendments to them; or

(b) any other Act of the Legislature or the regulations made under any such Act,
the provision of this Act or of the regulations made under this Act prevails to the extent of the conflict or inconsistency. 2004,c.50,s.3.

Amendment of
Schedules by
Director

4. (1) The Director shall, by order, amend Schedule I or II where

- (a) the name of a trust company or a fiduciary company is changed;
- (b) a trust company or a fiduciary company is dissolved;
- (c) a former trust company or a former fiduciary company that was dissolved under this Act is revived under this Act; or
- (d) a trust company or a fiduciary company is continued into another jurisdiction.

Amendment of
Schedules by
Lieutenant
Governor in
Council

(2) The Lieutenant Governor in Council may, where the Lieutenant Governor in Council considers it in the public interest, by order, amend Schedule I or II

- (a) to add a provincial company; or
- (b) to delete a trust company or a fiduciary company.

Publication

(3) Every order made under this section shall be published in the Gazette. 2004,c.50,s.4.

PART I TRUST COMPANIES

“annual statement”,
defined

5. In this Part, “annual statement” means the annual statement required to be filed under subsection 11(1). 2004,c.50,s.5.

Annual filing of
declaration

6. (1) A trust company shall file annually with the Director a declaration signed by an authorized representative of the trust company setting out the following particulars:

- (a) the name of the trust company and any other names under which it carries on business;
- (b) the address of the head office of the trust company in the province;
- (c) the nature of the business carried on by the trust company;
- (d) the address of the principal place of business of the trust company in the province;
- (e) the number of branches of the trust company operated in the province, with the address or location of each branch;
- (f) whether or not the trust company has deposit insurance with the Canada Deposit Insurance Corporation;
- (g) the name of any other jurisdiction in which the trust company is licensed to carry on business.

(2) A trust company shall pay an annual filing fee of \$5,000 on the filing of a declaration under subsection (1). Annual filing fee

(3) On the filing of the declaration under subsection (1) and payment of the fee required under subsection (2), the Director shall, subject to subsection 14(7) and section 17, issue to the trust company a license in a form approved by the Director. Issuance of license

(4) A license expires, unless earlier revoked, on the date that is set out in the license, and the license shall not be issued for a period in excess of 12 months. 2004,c.50,s.6. Expiry of license

7. (1) No trust company shall carry on the business, in the province, of receiving deposits from the public unless the trust company holds a license issued under subsection 6(3) stating that the company is authorized by the Director to carry on the business of receiving deposits from the public. Licenses authorizing receiving deposits

(2) The Director shall not, when issuing a license to a trust company, grant an authorization in the license to the trust company to receive deposits from the public unless the trust company *Idem*

- (a) is a member institution within the meaning of the *Canada Deposit Insurance Corporation Act*;
- (b) has regulatory capital within the meaning of the *Trust and Loan Companies Act* (Canada) of at least \$10,000,000; and
- (c) shows to the satisfaction of the Director that
 - (i) there exists a public benefit and advantage for authorizing the trust company to carry on the business of receiving deposits from the public,
 - (ii) the proposed management is fit, both as to character and as to competence, to manage the trust company,
 - (iii) each person subscribing for 10% or more of any class of shares of the trust company can demonstrate the adequacy of that person's financial resources and is fit as to character to own 10% or more of that class of shares,
 - (iv) each proposed director is fit, both as to character and as to competence, to be a director of the trust company,
 - (v) the proposed plan of operations as a trust company receiving deposits from the public is feasible,
 - (vi) the trust company intends to offer services to the public within a reasonable time after the authorization is granted to the trust company, and
 - (vii) the trust company meets the requirements of the regulations, if any, for the issuance of the license.

Permitted activities	(3) Subsection (1) does not prevent a trust company from receiving money in its capacity as a fiduciary or in the course of carrying out the terms, or furthering the interests, of any trust or estate of which it is trustee. 2004,c.50,s.7.
Head office	8. A trust company shall have its head office in the province. 2004,c.50,s.8.
Records	<p>9. A trust company shall prepare and maintain at its head office, or at any other place in the province designated by the directors of the trust company and approved by the Director, records containing</p> <ul style="list-style-type: none"> (a) copies of its instrument of incorporation or incorporating legislation and the bylaws and all amendments to them; (b) minutes of all meetings and resolutions of shareholders; (c) the names alphabetically arranged of all persons who are or have been security holders together with the address and occupation of every such person, as far as are known; (d) the number of securities held by each security holder; (e) the amounts paid in, and remaining unpaid respectively, on the securities of each security holder; (f) all transfers of securities, in their order as presented to the company for entry, with the date, and any other particulars of each transfer and the date of the entry; (g) the names, addresses, and occupations of all persons who are, or have been, directors of the company, with the dates at which each became or ceased to be a director; (h) minutes of meetings and resolutions of the directors; (i) adequate corporate accounting records; and (j) where the trust company receives deposits from the public, a record of all depositors, their names and addresses as far as are known and the sums deposited by the depositors. 2004,c.50,s.9.
“common trust fund”, defined	10. (1) In this section, “common trust fund” means a fund maintained by a trust company in which money, other than deposits, belonging to various estates and trusts in its care is combined for the purpose of facilitating investment.
Trust assets	(2) A trust company shall keep money and other assets acquired or held in trust by the trust company separate and distinct from its own assets and shall keep a separate account for each trust.
Investment in common trust fund	(3) Unless the instrument creating a trust otherwise provides, a trust company may invest money it holds in trust in one or more common trust funds. 2004,c.50,s.10.

- 11.** (1) A trust company shall, in respect of each fiscal year of the trust company, Annual statement
- (a) prepare a statement, in the form provided by the Director, outlining the financial condition and affairs of the trust company for the fiscal year of the trust company; and
 - (b) file the statement with the Director within six months of its fiscal year end.
- (2) The trust company must attach to the annual statement referred to in subsection (1) the financial statements of the trust company for the fiscal year to which the annual statement relates and the financial statements must be audited by a person qualified to practise as a public accountant under the *Public Accounting and Auditing Act* R.S.P.E.I. 1988, Cap. P-28. 2004,c.50,s.11. Audited financial statements
- 12.** A trust company that files its Relief from other filings and fees
- (a) annual declaration under subsection 6(1) along with the related fees payable under subsection 6(2);
 - (b) annual statement under subsection 11(1); and
 - (c) audited financial statements under subsection 11(2),
- within the time set for these filings under this Act, is not required to file annual returns for the same period or pay any related fees under its instrument of incorporation or incorporating legislation or under the *Companies Act*. 2004,c.50,s.12.
- 13.** (1) The Lieutenant Governor in Council may appoint a Superintendent to carry out the duties imposed on a Superintendent under this Act or such other duties as the Lieutenant Governor in Council may prescribe. Appointment of Superintendent
- (2) The Lieutenant Governor in Council may, under subsection (1), appoint as the Superintendent, the Superintendent of Financial Institutions for Canada. 2004,c.50,s.13. Appointment of Superintendent of Financial Institutions for Canada
- 14.** (1) Once each year or during such other period as the Superintendent considers appropriate for a particular trust company, the Superintendent or a person acting under the Superintendent's direction may examine the annual statements and the records maintained under section 9 of each trust company. Examination
- (2) For the purposes of an examination under subsection (1), a trust company shall prepare and submit to the Superintendent any further statement or statements with respect to the business, finances or other affairs of the trust company in addition to the annual statements and the records maintained under section 9 as the Superintendent may require and the officers, agents and employees of the trust company shall cause Statements

their books to be open for inspection and shall otherwise facilitate the examination as far as it is in their power to do so.

Attendance at head office

(3) In conducting an examination under subsection (1), the Superintendent or other person acting under the Superintendent's direction may attend at the head office of the trust company or its principal place of business in the province and, if necessary, the Superintendent or other person acting under the Superintendent's direction may visit any branch of the trust company.

Examination of officers, agents or employees

(4) The Superintendent or other person acting under the Superintendent's direction may examine under oath the directors, officers, agents or employees of a trust company for the purpose of obtaining any information that the Superintendent deems necessary for the purpose of the examination.

Report

(5) The Superintendent shall report to the Director the results of an examination made under this section.

Required statements

(6) The Superintendent shall indicate in a report made to the Director under subsection (5) whether the Superintendent

- (a) believes that the trust company is acting in contravention of
 - (i) this Act or the regulations or any other laws to which it is subject, or
 - (ii) its instrument of incorporation or incorporating legislation or its bylaws or any amendments to them; or
- (b) believes, as a result of an examination of a trust company that is authorized to receive deposits from the public under subsection 7(1), that the assets of the trust company are insufficient to justify its continuance in business.

Revocation

(7) Where the Director agrees with the opinion of the Superintendent reported under subsection (6), the Director may, after giving the trust company an opportunity to be heard,

- (a) revoke the authorization of the trust company to receive deposits from the public; or
- (b) revoke the license of the trust company or refuse to issue a license to the trust company. 2004,c.50,s.14.

Costs of examination

15. The costs of an examination made under section 14 are payable by the trust company and may be recovered as a civil debt due to the Crown. 2004,c.50,s.15.

Auditor

16. (1) The Director may appoint an auditor to audit the affairs of a trust company.

(2) Every auditor appointed under subsection (1) has a right of access at all reasonable times to the books and accounts of the trust company and is entitled to require from the directors and officers of the trust company any information and explanation as may be necessary for the performance of the duties of the auditor.

Right of access

(3) The auditor shall report to the Director the results of an audit made under this section. 2004,c.50,s.16.

Report to Director

17. The Director may revoke the license of a trust company or may refuse to issue a license to a trust company where any of the directors or officers of the trust company refuse or fail to comply with any of the provisions of this Part. 2004,c.50,s.17.

License revocation or refusal

18. (1) In this section, “voting share” means a share to which is attached one or more votes that may be cast to elect directors of a trust company under all circumstances or by reason of the occurrence of an event that has occurred and that is continuing.

“voting share”, defined

(2) Where a transfer or issuance is proposed of the voting shares of a trust company, the trust company

Notice and entry

- (a) shall give notice of the proposed transfer or issuance to the Director, including with the notice information concerning the beneficial ownership of the shares after the transfer is effected; and
- (b) shall not enter the transfer or issuance in the records, maintained under section 9, before the expiration of 30 days after the notice has been given to the Director.

(3) When, in the opinion of the Director, the transfer or issuance of voting shares referred to in subsection (2) would not be in the public interest, the Director shall refuse to permit the transfer or issuance.

Refusal to permit transfer

(4) Where the Director refuses to permit a transfer or issuance of voting shares under subsection (3), the Director shall, within seven days of the refusal, give written notice of the refusal to the trust company at its head office.

Refund

(5) Where the Director

Transfer void

- (a) is not given notice of a transfer or issuance of voting shares in accordance with this section; or
 - (b) refuses to permit the transfer or issuance of voting shares under this section,
- any purported transfer or issuance of the voting shares is null and void.

(6) A trust company may appeal a refusal of the Director under subsection (3) to the Minister within 30 days of the date of the decision.

Appeal

Decision final	(7) The decision of the Minister on the appeal is final and binding on the trust company. 2004,c.50,s.18.
Notice of intent to dissolve	<p>19. (1) The Director may give a trust company notice of intent to dissolve the trust company where the trust company does not</p> <ul style="list-style-type: none"> (a) file the declaration required under subsection 6(1) or pay the related filing fee under subsection 6(2) within six months of its becoming a trust company or within six months of the expiry or revocation of its previous license, whichever is applicable; (b) file its annual statement under subsection 11(1) and its audited financial statements under subsection 11(2) within six months of its fiscal year end; (c) pay the costs of an examination under section 14 within one month of receiving notice from the Director of the amount due; or (d) comply with any of the conditions of its revival imposed under subsection 20(2).
Notice period	<p>(2) The notice given under subsection (1) shall</p> <ul style="list-style-type: none"> (a) be sent in writing to the head office of the trust company; and (b) specify that the trust company has 60 days from the receipt of the notice to comply with the applicable sections of this Act or with the conditions of its revival.
Publication of notice of intent to dissolve	(3) If, after the expiration of the notice period referred to in subsection (2), the trust company has not complied with the applicable sections of this Act or with the conditions of its revival, the Director may publish a notice of intent to dissolve the trust company in the Gazette and in a newspaper published and circulated in the province.
Certificate of dissolution	(4) If the trust company has not complied with the applicable sections of this Act or with the conditions of its revival before the expiration of 60 days from the publication of the notice of intent to dissolve under subsection (3), the Director may issue a certificate of dissolution.
Dissolution	(5) Upon the issuance of the certificate of dissolution, the trust company is dissolved. 2004,c.50,s.19.
Revival	20. (1) Where a trust company is dissolved under section 19, any interested person may apply in a form approved by the Director to have the trust company revived.
Certificate of revival	<p>(2) The Director may issue a certificate of revival in respect of a trust company dissolved under this Act, and may impose such conditions on the revival as the Director considers appropriate, on the payment of</p> <ul style="list-style-type: none"> (a) a revival fee of \$50,000; (b) all fees payable by the trust company under this Act at the time of the dissolution of the trust company; and

(c) any fees that would have been payable by the trust company under this Act, if it had not been dissolved, during the period commencing on the day it was dissolved and ending on the day immediately before the day of the application under subsection (1) for the revival of the trust company.

(3) Subject to any conditions imposed under subsection (2), a trust company is revived on the date shown in the certificate of revival and the trust company has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved. Effect of certificate of revival

(4) Notice of the revival of a trust company under this section shall be published in the Gazette. 2004,c.50,s.20. Notice published in Gazette

PART II FIDUCIARY COMPANIES

21. In this Part

Definitions

(a) “annual fee” means the annual fee required to be paid by a fiduciary company under subsection 22(1); annual fee

(b) “annual filing fee” means the annual filing fee required to be paid by a fiduciary company under the incorporating legislation of the fiduciary company; annual filing fee

(c) “annual return” means the filing required to be made under the incorporating legislation of a fiduciary company of the information specified in subsection 80(1) of the *Companies Act*; annual return

(d) “audited financial statements” means the audited financial statements required to be filed under the incorporating legislation of a fiduciary company. 2004,c.50,s.21. Audited financial statements

22. (1) Every fiduciary company shall pay an annual fee in the amount of \$10,000 within six months of its fiscal year end. Annual fee

(2) A fiduciary company that pays an annual fee in the amount referred to in subsection (1) is not required to pay its annual filing fee for the same period. 2004,c.50,s.22. Exception

23. (1) The Director may give a fiduciary company notice of intent to dissolve the fiduciary company where the fiduciary company does not Notice of intent to dissolve

(a) pay its annual fee or does not file its audited financial statements or annual return within six months of its fiscal year end; or

(b) comply with any of the conditions of its revival imposed under subsection 24(2).

(2) The notice given under subsection (1) shall Notice period

- (a) be sent in writing to the registered office of the fiduciary company; and
- (b) specify that the fiduciary company has 60 days from the receipt of the notice to pay its annual fee or file its audited financial statements or annual return or comply with the conditions of its revival.

Publication of
notice of intent to
dissolve

(3) If after the expiration of the notice period referred to in subsection (2), the fiduciary company has not paid its annual fee or filed its audited financial statements or its annual return or complied with the conditions of its revival, the Director may publish a notice of intent to dissolve the fiduciary company in the Gazette and in a newspaper published and circulated in the province.

Certificate of
dissolution

(4) If the fiduciary company has not paid its annual fee or filed its audited financial statements or its annual return or complied with the conditions of its revival before the expiration of 60 days from the publication of the notice of intent to dissolve under subsection (3), the Director may issue a certificate of dissolution.

Dissolution

(5) Upon the issuance of the certificate of dissolution, the fiduciary company is dissolved. 2004,c.50,s.23.

Revival

24. (1) Where a fiduciary company is dissolved under section 23, any interested person may apply in a form approved by the Director to have the fiduciary company revived.

Certificate of
revival

(2) The Director may issue a certificate of revival in respect of a fiduciary company dissolved under this Act, and may impose such conditions on the revival as the Director considers appropriate, on the payment of

- (a) a revival fee of \$50,000;
- (b) all fees payable by the fiduciary company under this Act at the time of the dissolution of the fiduciary company; and
- (c) any fees that would have been payable by the fiduciary company under this Act, if it had not been dissolved, during the period commencing on the day it was dissolved and ending on the day immediately before the day of the application under subsection (1) for the revival of the fiduciary company.

Effect of certificate
of revival

(3) Subject to any conditions imposed under subsection (2), a fiduciary company is revived on the date shown in the certificate of revival and the fiduciary company has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

(4) Notice of the revival of a fiduciary company under this section shall be published in the Gazette. 2004,c.50,s.24.

Notice published in Gazette

25. (1) No fiduciary company shall administer trusts in the province or otherwise carry on business in the province as a trustee or fiduciary company unless it holds a license.

Administration of trusts in the province

(2) A fiduciary company shall not be considered to be carrying on business under subsection (1) by reason only that it

Carrying on business

(a) makes or maintains professional contact with counsel and attorneys, accountants, bookkeepers, banks, trust or loan corporations, management companies, investment advisers or other similar persons carrying on business within the province or obtains the services or advice of same;

(b) holds, within the province, meetings of its directors or shareholders;

(c) maintains company records or trust documents within the province; or

(d) makes an application to the Director, the Minister or to a court for any purpose.

(3) A fiduciary company that carries on business contrary to subsection (1) is deemed to be a trust company and is subject to Part I.

Deemed trust company

(4) A fiduciary company that is deemed to be a trust company under subsection (3) continues to be subject to this Part. 2004,c.50,s.25.

Subject to this Part

PART III GENERAL

26. (1) No person shall carry on the business, in the province, of receiving deposits from the public unless the person is

Prohibition on receiving deposits

(a) a trust company that holds a license issued under subsection 6(3) and that is authorized under subsection 7(1);

(b) an extra-provincial corporation authorized under section 6 of the *Extra-provincial Corporations Registration Act* R.S.P.E.I. 1988, Cap. E-14;

(c) a bank or bank mortgage subsidiary;

(d) an insurance company;

(e) a credit union; or

(f) a person, or a type or class of person, exempted from this subsection by the regulations.

Permitted activities

(2) Subsection (1) does not prevent a person from receiving money in the person's capacity as a fiduciary or in the course of carrying out the

terms, or furthering the interests, of any trust or estate of which the person is trustee. 2004,c.50,s.26.

Prohibition acting
as executor,
guardian or trustee

27. (1) No provincial company shall offer its services to the public or accept or execute the office of

- (a) executor or administrator;
- (b) guardian of property or attorney under a power of attorney for property; or
- (c) trustee of a trust,

unless the provincial company is

- (d) a trust company that holds a license under subsection 6(3);
- (e) a law corporation within the meaning of the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1; or
- (f) a provincial company, or a type or class of provincial company, exempted from this subsection by the regulations.

Application

(2) This section does not apply to a fiduciary company. 2004,c.50,s.27.

Offence

28. (1) A person who contravenes a provision of this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000.

Directors, officers,
agents

(2) Whether or not a body corporate has been prosecuted for or convicted of a contravention of a provision of this Act or the regulations, any director, officer or agent of the body corporate who knowingly authorizes, permits or acquiesces in such contravention commits an offence and is liable on summary conviction to a fine of not more than \$50,000.

Limitation

(3) No prosecution shall be commenced under this Act more than two years after the date on which the offence was committed or is alleged to have been committed. 2004,c.50,s.28.

Regulations

29. The Lieutenant Governor in Council may make regulations

- (a) relating to the licensing requirements for trust companies that are authorized under subsection 7(1), including
 - (i) capital, liquidity, bonding, insurance and other requirements,
 - (ii) any terms, conditions and limitations with respect to investments, loans or purchases by a trust company or liabilities of a trust company;
- (b) prescribing the duties of the Superintendent;
- (c) prescribing persons, or classes or types of persons, that are exempt from subsection 26(1) or 27(1); and

(d) with respect to any other matter the Lieutenant Governor in Council considers necessary for carrying out the purposes and provisions of this Act. 2004,c.50,s.29.

30. (1) In this section, “former Act” means the *Licensing Act* R.S.P.E.I. 1988, Cap. L-11. “former Act”, defined

(2) A license that is held by a trust company under the former Act on the day before the day this Act comes into force is deemed, on the day this Act comes into force, to be a license issued under section 6 of this Act, and that license expires under this Act on the date of the expiry of the license under the former Act, unless the license is sooner revoked under this Act. Trust companies licensed under former Act

(3) A trust company that does not hold a license under the former Act on the day before the day this Act comes into force shall pay any outstanding fees or costs due under the former Act on its initial application for a license under this Act. 2004,c.50,s.30. Trust companies not licensed under former Act

31. (1) Where an annual fee is required to be paid under subsection 22(1) before January 1, 2005, the amount of the annual fee is \$5,000. Transitional fee for fiduciary companies

(2) Where an annual filing fee is required to be paid under subsection 6(2) before January 1, 2005, the amount of the annual filing fee is \$1,200. 2004,c.50,s.31. Transitional fee for trust companies

32. On the coming into force of this section, the appointment of the Superintendent of Insurance for Canada as Superintendent under section 8 of the *Licensing Act* Regulations (EC287/71) is continued as an appointment under subsection 13(1). 2004,c.50,s.32. Continuation of appointment

SCHEDULE I

TRUST COMPANIES

1. Atlantic Trust Company Inc./Société Atlantic Trust Inc.
2. Canadian National Trust and Loan Company
3. [Repealed by an order made under subsection 4(1) on Dec. 31/04.]
4. Fidelity Trust Company of Canada, Ltd.
5. Gulf Trust Corporation
6. Heritage Trust Company
7. [Repealed by an order made under clause 4(2)(b) on Feb. 3/07.]
8. Pictet International Trust Corporation
2004,c.50

SCHEDULE II**FIDUCIARY COMPANIES**

1. Deutsche Transnational Trustee Corporation Inc.
2. [Repealed by an order made under subsection 4(1) on Feb. 14/06.]
3. Global Fiduciary (Canada) Inc.
4. Harvest Trustee Inc.
5. [Repealed by an order made under subsection 4(1) on Feb. 14/06.]
6. LOTA Fiduciary (Canada) Inc.
7. Rothschild Trust Canada Inc.
8. Integritas (Canada) Trustee Corporation Ltd [Amended by an order made under subsection 4(1) on Dec. 31/04.]
9. [Repealed by an order made under subsection 4(1) on Feb. 14/06.]
10. Transatlantic Trust Corporation - La Compagnie de Fiducie
Transatlantique
2004,c.50